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EXAMINER	
CHEN, J	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 13

Application Number: 09/439,427
Filing Date: November 15, 1999
Appellant(s): APPS ET AL.

Ralph E. Smith
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed 06-01-01.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 22, 23, 26, 29-31, 34-37 and claims 24, 25, 27, 28, 32, 33, 38 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,197,395	PIGOTT ET AL	03-1993
5,868,080	WYLER ET AL	02-1999

4,522,009 FINGERSON 06-1985

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 22, 23, 26, 29-31, 34, 35-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pigott et al ('395) in view of Wyler et al and Fingerson. The patent to Pigott et al teaches a plastic pallet (Fig. 1) having upper and lower decks (12) and a plurality of supports (14) therebetween. The upper and lower decks are separately molded and are attached to each other via the supports. Spaces between the supports define fork-receiving regions. For claims 22, 23, 26, 29-31, 34, 35-37, Pigott fails to teach that the top surface of the upper deck, the bottom surface of the upper deck (in the fork-receiving regions), and the bottom surface of the lower deck are scuffed to create slip-resistant surfaces. However, Wyler teaches the benefits of

having slip-resistant/anti-skid surfaces on the top surfaces(which include plastic reinforcing bars) of the upper deck (to inhibit movement of the payload disposed on the pallet, see column 1, lines 64-67), on the bottom surface of the upper deck (to prevent slippage of the pallet when it is being moved, see column 2, lines 45-47), and on the bottom surface of the lower deck (to ensure non-slip contact with a floor or racking structure, see column 2, lines 26-28). Further, the patent to Fingerson teaches the concept of roughening/scuffing a surface in order to make it into an anti-skid surface (see column 6, lines 5-8). It would have been obvious and well within the level of one having ordinary skill in the art at the time of the invention to modify the pallet of Pigott by roughening/scuffing the top surface of the upper deck, the bottom surface of the upper deck, and the bottom surface of the lower deck thereof, because of the advantages taught by Wyler. Furthermore, scuffing the pallet surfaces, such as is taught by Fingerson, is a conventional alternative and an easy and inexpensive way to provide anti-skid surfaces on the pallet of Pigott.

Claims 24, 25, 27, 28, 32, 33, 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pigott et al ('395) in view of Wyler et al and Fingerson as applied to claims 22, 23, 26, 29-31, 34-37 above, and further in view of Sturgis. The patent to Pigott et al in view of Wyler and Fingerson teaches structure substantially as claimed, as discussed above, including a pallet with various scuffed surface to provide a friction enhancing means, the only difference being the means to scuff the surfaces. However, the patent to Sturgis teaches the use of a cup-shaped abrading brush with wire tufts (fig. 1). It would have been obvious and well within the level of one having ordinary skill in

the art to use this type of brush since it would be more than capable of scuffing the plastic surface of a pallet, as desired/needed.

(11) Response to Argument

In response to appellant's remarks regarding the failure of Wyler to suggest anti-skid surface on the deck surface, note the following. He structures of Wyler, including (32, 40 are part of the deck surface. There is no structure claimed that would limit a pallet deck structure as otherwise. In response to appellant's remarks regarding the use of Fingerson, note the following. The claims of record are utility claims. It is noted that in a utility claim, the method of making carries no patentable weight. The references applied teach all structure as claimed. However, the references applied teach the use of structures and methods of providing the structures(brush and scuffing). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as stated above, it would have been obvious to modify the pallet of Pigott by roughening/scuffing the top surface of the upper deck, the bottom surface of the upper deck, and the bottom surface of the lower deck thereof because of the advantages of such features on pallet surfaces, as taught by Wyler. Furthermore, scuffing the pallet surfaces, such as is

taught by Fingerson, would be an easy and non-expensive way to provide anti-skid surfaces on the pallet of Pigott.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Chen/jvc
August 22, 2001
Prb

pmc

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